

CR 2017/86 - Income tax: The National Pharmacies Early Retirement Scheme 2017

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Class Ruling

Income tax: The National Pharmacies Early Retirement Scheme 2017

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ⓘ This publication provides you with the following level of protection:

This publication (excluding appendixes) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

A public ruling is an expression of the Commissioner's opinion about the way in which a relevant provision applies, or would apply, to entities generally or to a class of entities in relation to a particular scheme or a class of schemes.

If you rely on this ruling, the Commissioner must apply the law to you in the way set out in the ruling (unless the Commissioner is satisfied that the ruling is incorrect and disadvantages you, in which case the law may be applied to you in a way that is more favourable for you – provided the Commissioner is not prevented from doing so by a time limit imposed by the law). You will be protected from having to pay any underpaid tax, penalty or interest in respect of the matters covered by this ruling if it turns out that it does not correctly state how the relevant provision applies to you.

Summary – what this ruling is about

1. This Ruling sets out the Commissioner's opinion on the way in which the relevant provision(s) identified below apply to the defined class of entities, who take part in the scheme to which this Ruling relates.

Relevant provision(s)

2. The relevant provisions dealt with in this Ruling are:
- section 83-170 of the *Income Tax Assessment Act 1997* (ITAA 1997)
 - section 83-180 of the ITAA 1997.

All legislative references are to the ITAA 1997 unless otherwise indicated.

Class of entities

3. The class of employees to whom this scheme applies is staff of the Friendly Society Medical Association Limited (National Pharmacies), shown at paragraph 13 of this Ruling, who receive a payment under the scheme described in paragraphs 8 to 31 of this Ruling.

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Qualifications

4. The Commissioner makes this Ruling based on the precise scheme identified in this Ruling.
5. The class of entities defined in this Ruling may rely on its contents provided the scheme actually carried out is carried out in accordance with the scheme described in paragraphs 8 to 31 of this Ruling.
6. If the scheme actually carried out is materially different from the scheme that is described in this Ruling, then:
 - this Ruling has no binding effect on the Commissioner because the scheme entered into is not the scheme on which the Commissioner has ruled, and
 - this Ruling may be withdrawn or modified.

Date of effect

7. The Ruling applies from 13 December 2017 to 30 June 2018. The Ruling continues to apply after 30 June 2018 to all entities within the specified class who entered into the specified scheme during the term of the Ruling. However, the Ruling will not apply to taxpayers to the extent that it conflicts with the terms of a settlement of a dispute agreed to before the date of issue of the Ruling (see paragraphs 75 and 76 of Taxation Ruling TR 2006/10).

Scheme

8. The following description of the scheme is based on information provided by the applicant.
9. National Pharmacies is seeking the Commissioner's approval to implement an early retirement scheme (ERS) in accordance with section 83-180.
10. The scheme will be titled '*The National Pharmacies Early Retirement Scheme 2017*', hereafter referred to as 'the Scheme'.
11. National Pharmacies is commencing a transformation of the organisation. To enable this, National Pharmacies has identified a need to reduce its store and distribution work force in line with its organisational and staffing restructure by providing an incentive to employees who meet the eligibility criteria to retire early.
12. The purpose in implementing the Scheme is to rationalise and re-organise National Pharmacies' operations.
13. The class of employees to whom the Scheme applies is all National Pharmacies employees who are:
 - aged 64 years or under, and

- employed as a Pharmacist, Pharmacy Assistant, Beauty Consultant or Distribution Centre Store Worker.

14. Employees within this class may wish to express an interest in voluntarily leaving the organisation.

15. The payment to be made to eligible employees under the Scheme is as follows:

Store Employees Continuous service on termination	Redundancy pay period
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	8 weeks
At least 5 years but less than 6 years	10 weeks
At least 6 years but less than 7 years	11 weeks
At least 7 years but less than 8 years	13 weeks
At least 8 years but less than 9 years	14 weeks
At least 9 years but less than 10 years	16 weeks
At least 10 years	12 weeks

Distribution Centre Storeworkers Continuous service on termination	Redundancy pay period
At least 1 year but less than 2 years	4 weeks
At least 2 years but less than 3 years	6 weeks
At least 3 years but less than 4 years	7 weeks
At least 4 years but less than 5 years	2 weeks' pay for every completed year of service to a maximum of 26 weeks' pay

16. In addition, all employees terminated under the Scheme will receive their accrued annual and long service leave entitlements however they do not form part of the payment made under the Scheme.

17. The following employees are excluded from participating in the scheme. They are:

- dispensary technicians
- employees in optical stores
- administrative employees

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- employees who have resigned at the time of the scheme coming into effect
- employees who have provided notice of their intention to retire at the time of the scheme coming into effect
- employees completing a probationary period
- employees employed on a fixed term contract who don't hold a substantive position
- employees on unpaid leave
- employees with current WorkCover claims
- any employee who is under investigation for allegations of misconduct or serious misconduct, and
- casual employees.

18. National Pharmacies will limit the maximum number of offers to be made to eligible employees under the Scheme. Should the number of eligible employees who express an interest to retire under the Scheme exceed the number of packages available under the Scheme, offers will be made on a first come first serve basis.

19. If the number of employees initially willing to participate in the Scheme is less than 25% of the eligible numbers for each employee group, National Pharmacies may implement a second expression of interest process during the duration of the Scheme.

20. Following approval of the Scheme, all eligible employees within the class will be invited to apply and will have four weeks to submit applications of interest in the scheme.

21. Offers will be made to eligible employees approximately four weeks after the closing date for applications.

22. All eligible employees who accept an offer to retire under the Scheme will terminate employment and receive payment no later than four weeks after acceptance of the offer, unless otherwise negotiated due to operational requirements. All employees retiring under the Scheme must, without exception, cease their employment prior to the expiration of the Scheme on 30 June 2018.

23. It is proposed the scheme will be implemented from 13 December 2017 to 30 June 2018.

24. The payment made under the Scheme is in excess of any superannuation and any other benefits to which eligible employees would otherwise be entitled.

25. Any employee, who terminates employment other than under the Scheme, will not be entitled to receive the Scheme payment.

26. The retirement of employees who receive a payment under the Scheme will occur before they turn 65 years of age.

27. Payments made to employees who are 65 years or over will not be an early retirement scheme payment and will not be eligible for the tax-free base limits under the Scheme. These payments will be taxed as employment termination payments.
28. Payments made under the scheme will be at arm's length.
29. There is no agreement in place between the eligible employees and National Pharmacies, or between National Pharmacies and another person to employ any employee after the retirement under the Scheme.
30. If an employee chooses not to participate in the Scheme, their employment shall continue with no change.

Ruling

31. The early retirement scheme to be implemented by the National Pharmacies is an early retirement scheme for the purposes of section 83-180.
32. Accordingly, so much of the payment received by an eligible employee that exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of their employment at the time of the retirement will be an early retirement scheme payment.
33. In addition, so much of the early retirement scheme payment as falls within the threshold calculated in accordance with section 83-170 is not assessable income and is not exempt income.

Commissioner of Taxation

13 December 2017

Appendix 1 – Explanation

❶ *This Appendix is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

34. Where a scheme satisfies the requirements of section 83-180 that scheme will be an 'early retirement scheme'.

35. Subsection 83-180(3) states that:

A scheme is an **early retirement scheme** if:

- (a) all the employer's employees who comprise such a class of employees as the Commissioner approves may participate in the scheme; and
- (b) the employer's purpose in implementing the scheme is to rationalise or re-organise the employer's operations by making any change to the employer's operations, or the nature of the work force, that the Commissioner approves; and
- (c) before the scheme is implemented, the Commissioner, by written instrument, approves the scheme as an early retirement scheme for the purposes of this section.

These three conditions are now considered.

All employees within a class approved by the Commissioner may participate in the scheme

36. In order to satisfy the first condition, the scheme must be offered to all employees in a class approved by the Commissioner under paragraph 83-180(3)(a).

37. The class of employees to whom early retirement will be offered is set out in paragraph 13 of this Ruling.

38. The Commissioner considers that this is an appropriate class of persons to whom the scheme will be offered. In approving this class of employees the Commissioner has considered the nature of the rationalisation or re-organisation of the operations of the employer. It is therefore considered that these employees meet the requirements of an approved class of employees for the purposes of paragraph 83-180(3)(a).

The employer's purpose in implementing the scheme is to rationalise or re-organise the employer's operations in a way approved by the Commissioner

39. The proposed scheme must be implemented by the employer with a view to rationalising or re-organising the operations of the employer as described in paragraph 83-180(3)(b).

40. Paragraphs 11 and 12 of this Ruling describe the nature of the rationalisation or re-organisation of the employer's operations. In approving the Scheme, the Commissioner has had regard to the changes in the operations and nature of the work force of the employer. It is considered that the Scheme is to be implemented by the employer with a view to rationalising or re-organising the operations of the employer for the purposes of paragraph 83-180(3)(b). Accordingly, the second condition for approval has been met.

The scheme must be approved by the Commissioner prior to its implementation

41. The Scheme is proposed to operate for a period commencing from 13 December 2017 to 30 June 2018. The approval to be provided by the class ruling will have been granted prior to implementation therefore, for the purposes of paragraph 83-180(3)(c), this condition is satisfied.

42. The Scheme will be in operation for approximately six months. This is considered appropriate due to the circumstances of the re-organisation and the employees that will be given the option of early retirement under the Scheme.

Other relevant information

43. Under subsection 83-180(1), so much of the payment received by an employee because the employee retires under an approved early retirement scheme as exceeds the amount that could reasonably be expected to be received by the employee in consequence of the voluntary termination of their employment at the time of the retirement is an early retirement scheme payment.

44. It should be noted that, in order for a payment to qualify as an early retirement scheme payment, it must also satisfy the following requirements (as set out in subsections 83-180(2), (5) and (6)):

- the retirement occurred before the employee turned age 65 or such earlier date on which the employee's employment would have terminated under the terms of employment because of the employee attaining a certain age or completing a particular period of service (as the case may be)
- if the employee and the employer are not dealing with each other at arm's length (for example because they are related in some way), the payment does not exceed the amount that could reasonably be expected to be made if the retirement was made at arm's length
- at the time of the retirement there was no arrangement between the employee and the employer, or between

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the employer and another person, to employ the employee after the retirement

- the payment must not be made in lieu of superannuation benefits, and
- it is not a payment mentioned in section 82-135 (apart from paragraph 82-135(e)).

45. The term 'arrangement' is defined in subsection 995-1(1) as meaning 'any arrangement, agreement, understanding, promise or undertaking, whether express or implied, and whether or not enforceable (or intended to be enforceable) by legal proceedings'.

46. An early retirement scheme payment that falls within the specified limit is referred to as the 'tax-free' amount and will not be assessable income and will not be exempt income.

47. For the 2017-18 income year, the tax-free amount is limited to \$10,155 (base amount) plus \$5,078 (service amount) for each whole year of completed employment service to which the early retirement scheme payment relates. It should be noted that six months, eight months or even eleven months do not count as a whole year for the purposes of this calculation.

48. The total of the amount received on termination of employment calculated in accordance with paragraph 15 of this Ruling may qualify as an early retirement scheme payment.

49. The total payment calculated in accordance with paragraph 15 of this Ruling will be measured against the limit calculated in accordance with the formula mentioned in paragraph 47 of this Ruling to determine the 'tax-free' amount of the early retirement scheme payment.

50. The 'tax-free' amount will:

- not be an employment termination payment, and
- not be able to be rolled-over into a superannuation fund.

51. Any payment in excess of this limit will be an employment termination payment and will be split into tax-free and taxable components. The tax-free component of an employment termination payment includes the pre-July 83 segment of the payment. The tax-free component is not assessable income and is not exempt income.

Appendix 2 – Detailed contents list

52. The following is a detailed contents list for this Ruling:

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References

- Previous draft:*
- ITAA 1997 83-180
- Not previously issued as a draft
- ITAA 1997 83-180(1)
 - ITAA 1997 83-180(2)
- Related Rulings/Determinations:*
- ITAA 1997 83-180(3)
 - ITAA 1997 83-180(3)(a)
 - ITAA 1997 83-180(3)(b)
 - ITAA 1997 83-180(3)(c)
- TR 2006/10
- Legislative references:*
- ITAA 1997
 - ITAA 1997 82-135
 - ITAA 1997 82-135(e)
 - ITAA 1997 83-170
 - ITAA 1997 83-180(5)
 - ITAA 1997 83-180(6)
 - ITAA 1997 995-1(1)
 - TAA 1953
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ATO references

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